

Fishery Conservation and Management

§ 635.8

HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§600.725 and 600.746 of this chapter and—

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

(f) *Vessel responsibilities.* An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 17372, Mar. 30, 2001; 68 FR 63741, Nov. 10, 2003; 74 FR 66586, Dec. 16, 2009]

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to §635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section,

is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to §635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to §635.4(g)(2).

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant

to §635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under §635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to §635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons

who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by way of purchase, barter, or trade by contacting NMFS at an address designated by NMFS.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the

dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per § 635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark

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dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

[71 FR 58166, Oct. 2, 2006, as amended at 73 FR 38153, July 3, 2008; 74 FR 66586, Dec. 16, 2009]

Subpart B—Limited Access

§ 635.16 [Reserved]

Subpart C—Management Measures

§ 635.20 Size limits.

(a) *General*. The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

(b) *BFT size classes*. The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna*. (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish*. (1) No person shall take, retain or possess a blue marlin taken

from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(4) No person shall take, retain or possess a roundscale spearfish taken from its management unit that is less than 66 inches (168 cm), LJFL.

(5) The Atlantic blue marlin, white marlin, and roundscale spearfish minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) for blue marlin and 70 and 79 inches (177.8 and 200.7 cm) for white marlin and roundscale spearfish, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the FEDERAL REGISTER for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

(e) *Sharks*. The following size limits change depending on the species being caught and the retention limit under which they are being caught as specified under § 635.22(c).

(1) All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins naturally attached.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

(3) There is no size limit for Atlantic sharpnose or bonnethead sharks taken under the recreational retention limits specified at § 635.22(c)(3).

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